IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13817 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANCHANDBHAI MOHANLAL PANCHAL, - Petitioner(s)
Versus
THE STATE OF GUJARAT SERVED THRO' DEPUTY SECRETARY & 1 - Respondent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/08/2006

ORAL JUDGMENT

Rule. Mr. Mengdey, learned AGP waives notice of rule for respondent Nos. 1 & 2. With consent of

the learned advocates appearing for both the sides, the matter is finally heard.

2. The only question which arise for consideration of this Court is whether the order passed by the authority under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') for assumption of the land under Section 65 of the Act would survive after expiry of the period of 10 years from the date of the order or not?

3. The short facts to appreciate the aforesaid question are as under:

The land forming a part of land bearing Survey No. 172 admeasuring 5 acres and 5 gunthas situated at Chitrasani village was purchased by the petitioner from one Jethabhai Becharbhai Patel by Registered Sale Deed dated 23.03.1988. As the land remained uncultivated for a period of two consecutive years, it appears that the proceedings were initiated under Section 65 of the Act by the Deputy Collector and ultimately, on 23.05.1988, the order was passed for assumption of the land by the State Government. It appears that in the said order, it has been mentioned by the Deputy Collector that the land is assumed by the Government without any compensation under Section 65 of the Act. However, in the order, it was not provided for

any stipulated period for assumption of the land by the Government. It is the case of the petitioner that the period of 10 years has expired in the year 1998 and thereafter, the order would not operate. It may also be recorded that the matter was carried before the Gujarat Revenue Tribunal against the order passed under Section 65 of the Act and as per the order dated 11.04.1994, the Tribunal observed that it is no jurisdiction to hear the present revision and the revision was dismissed.

In the year 2005, i.e. on 10.08.2005, an application was submitted by the petitioner that now the period of 10 years is over and therefore, the land should be shown in the revenue record in the name of the petitioner. It appears that a letter dated 13.01.2006 was addressed by the Deputy Collector to the petitioner wherein, it was communicated that when the order dated 23.08.1988 was passed, no time limit was provided in the order and therefore, the land cannot be given to the petitioner and if in case the petitioner is aggrieved by the aforesaid order, the appropriate remedy may be resorted to. It appears that thereafter on 24.01.2006, the petitioner once again reiterated the aspects of expiry of the period of 10 years and requested to show the name of the petitioner in the revenue record as in possession of the land.

However, the said requested was also declined by the Deputy Collector as per the letter dated 02.05.2006 and it is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

4. Heard Mr. Shah, learned counsel for the petitioner and Mr. Mengdey, learned AGP for the State Authorities.

5. There is no dispute on the point that the order dated 23.05.1988 did not provide for any period for assumption of the land from the original holder of the land. However, Section 65(1A) of the Act reads as under:

> *"The assumption of management of land under sub-section (1) on the ground that the fulle and efficient use of the land has not been made for the purpose of agriculture shall be for such period as the State Government may, from time to time fix, so, however, that such period shall not exceed ten years in the aggregate."*

Therefore, the power for assumption of the land can at the most be exercised for a period not exceeding 10 years in aggregate. Therefore, even though the order did not provide for the specific period, it would be reasonable to construe that such period at the most may be the maximum period as provided under Section 65(1A) of the Act. In any event, there was no authority on the part of the Deputy Collector to

pass the order under Section 65(1A) of the Act for assumption of the land exceeding to period of 10 years in aggregate because Section itself did not authorise for such purpose and if the order is read for all times to come, in any case, exceeding 10 years, such would not only be in contravention to the statute but, it would also be ultra vires to the power under Section 65(1A) of the Act. Sub-section itself provides for maximum limit of the period. The aforesaid aspects are also considered by this Court in the case of **Vora Muniraben Gulambhai Vs. State of Gujarat reported at 2004(2) GLH 573,** wherein, the view taken is that the State Government has no power or jurisdiction to confiscate the land in question permanently.

6. Mr. Mengdey, learned AGP, is not in a position to show any other statutory provisions enabling the Deputy Collector to assume the land for the period exceeding 10 years or for indefinite period. Even otherwise also, the interpretation as canvassed by the Deputy Collector vide letter dated 13.01.2006 that as the period was not specified in the order and therefore, the land cannot be given back to the original holder of the land cannot be maintained or cannot be allowed to be operated, in any case, after the period of 10 years from the date of passing of the order.

7. In view of the above, the only conclusion is that the order dated 23.05.1988 passed by the Deputy Collector under Section 65 of the Act cannot be termed as for indefinite period and the life of the order would not, in any case, continue after the expiry of the period of 10 years after 23.05.1998. Consequently, the original holder of the land and the petitioner in capacity as successor of the original holder of the land would be entitled to the restoration of the status as prevailing prior to the order dated 23.05.1988 and the revenue authority shall act accordingly.

8. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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